

AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 722

Introduced by Senator Bates
(Coauthor: Senator Huff)
(Coauthor: Assembly Member Wagner)

February 27, 2015

An act to *amend Sections 1203.067 and 3008 of, and to add Section 645.5 to* the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 722, as amended, Bates. Sex offenders: GPS monitoring: removal.

Existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, requires every inmate who has been convicted of an offense that requires him or her to register as a sex offender or any attempt to commit any of those offenses and who is committed to prison and released on parole to be monitored by a global positioning system for life. *Existing law requires the terms of probation or parole for all persons placed on formal probation or parole for an offense that requires registration as a sex offender to include, among other things, participation in, or completion of, a sex offender management program, as specified.*

This bill would make it a felony for a person to willfully remove or disable an electronic, global positioning system, or other monitoring device, if the device was affixed as ~~part of a criminal sentence or juvenile court disposition~~ *for a condition of parole, postrelease community supervision, or probation as a result of a conviction of certain specified sex offenses, if the person intended to evade supervision and either does not surrender, or is not apprehended, within one week of the issuance of a warrant for absconding*, punishable by

imprisonment in the state prison for 16 months, or 2 or 3 years. *The bill would require the terms of probation or parole of a person who has committed a violation of these provisions to include participation and completion of a sex offender management program.* By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 645.5 is added to the Penal Code, to read:
2 645.5. (a) A person who willfully removes or disables, *or*
3 *permits another person to remove or disable*, an electronic, global
4 positioning system, or other monitoring device affixed to his or
5 her ~~person or the person of another person~~, if the device was
6 affixed as ~~a result of a criminal sentence or juvenile court~~
7 ~~disposition for any offense specified in subdivision (e) of Section~~
8 ~~667.61, condition of parole, postrelease community supervision,~~
9 *or probation as a result of a conviction of any offense specified in*
10 *subdivision (c) of Section 667.61, if the person intended to evade*
11 *supervision and either does not surrender, or is not apprehended,*
12 *within one week of the issuance of a warrant for absconding, is*
13 guilty of a felony, punishable by imprisonment in the state prison
14 for 16 months, or two or three years. *There shall be a rebuttable*
15 *presumption that the person intended to evade supervision.*
16 (b) This section does not apply to the removal or disabling of
17 a monitoring device by a physician, emergency medical services
18 technician, or by any other emergency response or medical
19 personnel when doing so is necessary during the course of medical
20 treatment of the person subject to the device. This section does
21 not apply if the removal or disabling of the device is authorized
22 or required by a court, by law enforcement, or by any other entity
23 that is responsible for placing the device upon the person or that
24 has the authority and responsibility to monitor the device.

1 SEC. 2. *Section 1203.067 of the Penal Code is amended to*
2 *read:*

3 1203.067. (a) Notwithstanding any other law, before probation
4 may be granted to any person convicted of a felony specified in
5 Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is
6 eligible for probation, the court shall do all of the following:

7 (1) Order the defendant evaluated pursuant to Section 1203.03,
8 or similar evaluation by the county probation department.

9 (2) Conduct a hearing at the time of sentencing to determine if
10 probation of the defendant would pose a threat to the victim. The
11 victim shall be notified of the hearing by the prosecuting attorney
12 and given an opportunity to address the court.

13 (3) Order any psychiatrist or psychologist appointed pursuant
14 to Section 288.1 to include a consideration of the threat to the
15 victim and the defendant's potential for positive response to
16 treatment in making his or her report to the court. Nothing in this
17 section shall be construed to require the court to order an
18 examination of the victim.

19 (b) On or after July 1, 2012, the terms of probation for persons
20 placed on formal probation for an offense that requires registration
21 pursuant to Sections 290 to 290.023, inclusive, *or for the offense*
22 *specified in Section 645.5*, shall include all of the following:

23 (1) Persons placed on formal probation prior to July 1, 2012,
24 shall participate in an approved sex offender management program,
25 following the standards developed pursuant to Section 9003, for
26 a period of not less than one year or the remaining term of
27 probation if it is less than one year. The length of the period in the
28 program is to be determined by the certified sex offender
29 management professional in consultation with the probation officer
30 and as approved by the court. Participation in this program applies
31 to every person described without regard to when his or her crime
32 or crimes were committed.

33 (2) Persons placed on formal probation on or after July 1, 2012,
34 shall successfully complete a sex offender management program,
35 following the standards developed pursuant to Section 9003, as a
36 condition of release from probation. The length of the period in
37 the program shall be not less than one year, up to the entire period
38 of probation, as determined by the certified sex offender
39 management professional in consultation with the probation officer
40 and as approved by the court. Participation in this program applies

1 to each person without regard to when his or her crime or crimes
2 were committed.

3 (3) Waiver of any privilege against self-incrimination and
4 participation in polygraph examinations, which shall be part of the
5 sex offender management program.

6 (4) Waiver of any psychotherapist-patient privilege to enable
7 communication between the sex offender management professional
8 and supervising probation officer, pursuant to Section 290.09.

9 (c) Any defendant ordered to be placed in an approved sex
10 offender management program pursuant to subdivision (b) shall
11 be responsible for paying the expense of his or her participation
12 in the program as determined by the court. The court shall take
13 into consideration the ability of the defendant to pay, and no
14 defendant shall be denied probation because of his or her inability
15 to pay.

16 *SEC. 3. Section 3008 of the Penal Code is amended to read:*

17 3008. (a) The Department of Corrections and Rehabilitation
18 shall ensure that all parolees under active supervision who are
19 deemed to pose a high risk to the public of committing sex crimes,
20 as determined by the State-Authorized Risk Assessment Tool for
21 Sex Offenders (SARATSO), as set forth in Sections 290.04 to
22 290.06, inclusive, are placed on intensive and specialized parole
23 supervision and are required to report frequently to designated
24 parole officers. The department may place any other parolee
25 convicted of an offense that requires him or her to register as a sex
26 offender pursuant to Section 290 who is on active supervision on
27 intensive and specialized supervision and require him or her to
28 report frequently to designated parole officers.

29 (b) The department shall develop and, at the discretion of the
30 secretary, and subject to an appropriation of the necessary funds,
31 may implement a plan for the implementation of relapse prevention
32 treatment programs, and the provision of other services deemed
33 necessary by the department, in conjunction with intensive and
34 specialized parole supervision, to reduce the recidivism of sex
35 offenders.

36 (c) The department shall develop control and containment
37 programming for sex offenders who have been deemed to pose a
38 high risk to the public of committing a sex crime, as determined
39 by the SARATSO, and shall require participation in appropriate
40 programming as a condition of parole.

(d) On or after July 1, 2012, the parole conditions of a person released on parole for an offense that requires registration pursuant to Sections 290 to 290.023, inclusive, *or for the offense specified in Section 645.5*, shall include all of the following:

(1) Persons placed on parole prior to July 1, 2012, shall participate in an approved sex offender management program, following the standards developed pursuant to Section 9003, for a period of not less than one year or the remaining term of parole if it is less than one year. The length of the period in the program is to be determined by the certified sex offender management professional in consultation with the parole officer and as approved by the court. Participation in this program applies to each person without regard to when his or her crime or crimes were committed.

(2) Persons placed on parole on or after July 1, 2012, shall successfully complete a sex offender management program, following the standards developed pursuant to Section 9003, as a condition of parole. The length of the period in the program shall be not less than one year, up to the entire period of parole, as determined by the certified sex offender management professional in consultation with the parole officer and as approved by the court. Participation in this program applies to every person described without regard to when his or her crime or crimes were committed.

(3) Waiver of any privilege against self-incrimination and participation in polygraph examinations, which shall be part of the sex offender management program.

(4) Waiver of any psychotherapist-patient privilege to enable communication between the sex offender management professional and supervising parole officer, pursuant to Section 290.09.

(e) Any defendant ordered to be placed in an approved sex offender management treatment program pursuant to subdivision (d) shall be responsible for paying the expense of his or her participation in the program. The department shall take into consideration the ability of the defendant to pay, and no defendant shall be denied discharge onto parole because of his or her inability to pay.

~~SEC. 2.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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